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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/844,847	04/27/2001	Pedro S. de Souza	020431.0862	2784

7590 07/27/2005

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EXAMINER

TO, BAOQUOC N

ART UNIT	PAPER NUMBER
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2162

DATE MAILED: 07/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/844,847

Applicant(s)

DE SOUZA ET AL.

Examiner

Baoquoc N. To

Art Unit

2162

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3,5,6,8-10,13,15,17-19,23,24,26-28,30-32 and 36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3, 5-6, 8-10, 13, 15, 17-19, 23-24, 26-28, 30-32, 36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 3, 5-6, 8-10, 13, 15, 17-19, 23-24, 26-28, 30-32, 36 are pending in this application.

Response to Arguments

2. Applicant's arguments with respect to claims 30-32 and 36 have been considered but are moot in view of the new ground(s) of rejection.

Double Patenting

3. Claims 3, 5-6, 8-10, 13, 15, 17-19, 23-24, 26-28, 30-32, 36 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1-29 of the co-pending application 10/940851. Although the conflicting claims are not identical, they are not patentably distinct from each other because of the following reasons: Claim 30-32 and 36 of the instant application substantially recites the limitations of claim 1, 11, 20 and 29 of the cited co-pending application.

It would have been obvious to one of ordinary skill in the art of data processing at the time the invention was made to modify the cited steps as indicated claim 1 of the instant application since the omission and addition of the cited limitations would have not changed the process according to which the system for optimization using multi-dimensional data. Therefore, the ordinary skilled artisan would have been also motivated to modify claim 1 of the cited US patent application by deleting an evaluation level specified by identifying a particular level in the hierarchy of each data dimension. The cited adding elements would not interfere with the functionality of the steps

previously claimed and would perform the same function. In re Karlson, 136 USPQ 184 (CCPA 1963).

The dependent claims 3, 5-6, 8-10, 13, 15, 17-19, 23-24 and 26-28 of the instant application are rejected for fully incorporating the errors of their respective base claims by dependency.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Regarding claims 30-32 and 36, the phrase "that" and "that is" renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Claims 3, 5-6, 8-10, 13, 15, 17-19, 23-24 and 26-28 are dependent; therefore, they are rejected under the same reason.

Contact Information

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Baoquoc N. To whose telephone number is at 571-272-4041 or via e-mail BaoquocN.To@uspto.gov. The examiner can normally be reached on Monday-Friday: 8:00 AM – 4:30 PM, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Breene can be reached at 571-272-4107.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

Application/Control Number: 09/844,847
Art Unit: 2162


Page 4

Washington, D.C. 20231.

The fax numbers for the organization where this application or proceeding is assigned are as follow:

(703) 872-9306 [Official Communication]

Baoquoc N. To
July 22rd, 2005



JEAN M. CORRIELUS
PRIMARY EXAMINER